IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 551 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMIR RAMESHBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MEHUL SHARAD SHAH for Applicant(s) : 1,
Mr.U.R.Bhatt, A.P.P. for Respondent(s) : 1,
MR Y.S.Lakhani for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 26/04/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr. U.R.Bhatt waives service of rule on behalf of the respondent no.1 while Mr. Y.S.Lakhani waives service

of rule for the respondent no.2.

2. By means of this application under Section 482 of the Code of Criminal Procedure, 1973 is preferred by the petitioner with a prayer to quash the FIR bearing CR no.1 97 of 2007 lodged by the respondent no.2 against him at Navrangpura Police Station, Ahmedabad City for the alleged commission of offences punishable under Sections 406, 420, 465, 467, 468, 471, 114 of the Indian Penal Code and also under Sections 63 and 63-A of the Copy Right Act. It is also prayed to quash and set aside or to suspend the condition no.4 imposed by the Additional City Sessions Judge by order dated 23-7-2007 in Criminal Misc. Application no.655 of 2007 while granting bail to the petitioner.

3. The respondent no.2-complainant in the complaint alleged that the complainant is manufacturing wrench and he is having copyright of the designs of wrench. It is further alleged that on opening the website at his Navrangpura Office, he found that the petitioner 's website “ wwwskpop.com” is using the word “pop” which according to the complainant is his copy right and trademark. It is also alleged that the petitioner had sent confidential information to China and that the petitioner is manufacturing such wrenches and selling the same to different countries. According to the complainant, by these alleged acts of the petitioner he has committed the offences as detailed in the complaint, and therefore, the application deserves to be dismissed.

4. According to the petitioner , he is a citizen of United States of America and is permanently residing in U.S.A. The petitioner was distributor of the complaint from 1991 to 1999, but owing to some dispute, he stopped marketing of wrench of the complainant. Therefore, the complainant issued notice dated 13-12-2001 to the petitioner which was replied by the petitioner vide letter dated January 10, 2002 and thereafter suddenly on 11-2-2007 after a period of five years, the present complaint is filed. According to the petitioner “Skpop.com is a registered wedbsite of USA of petitioner's Company S.K.Enterprise, that the word 'pop' registered wordmark of wrench of the complainant is valid upto 3-10-2003, that nothing has happened in India, According to the petitioner, he has not committed any offence under the Copy Right Act or under the Indian Penal Code as alleged in the complaint.That on he basis of the said complaint which is absurd and malicious, he was arrested on 13-2-2007 without proper investigation and inquiry and was remanded to judicial custody by the learned Magistrate. According to the petitioner he co-operated with the investigation and the investigating officer submitted report under Section 169 of the Code of Criminal Procedure, 1973 before the learned Magistrate on 17-2-2007. However, the opponent no.2 original complainant moved Special Criminal Application no.296 of 2007 before this Court for transfer of investigation to some other agency and the Honourable Court (Coram: K.S.Jhaveri,J.by order dated 7-3-

2007 directed the DCP of Ahmedabad to investigate into the matter and submit report. In the meantime, the petitioner preferred Criminal Misc. Application no.655 of 2007 before the City Sessions Court, Ahmedabad and the learned Additional City Sessions Judge passed order dated 23-2-2007 granting bail to the petitioner by imposing certain conditions including the condition that the accused shall not leave the territory of India without prior permission of the Court and deposit his passport before I.O. Within a day, if he is having. According to the petitioner, he had also preferred Misc. Criminal Application no.1802 of 2007 for quashing the FIR, but as he could not provide full details to the Advocate as he was in Central Jail, Sabarmati, and had sought permission for withdrawal of the application with a liberty to file afresh which was granted by this Court (Coram: K.S.Jhaveri,J.) by order dated 5-3-2007. Hence, the present Spl.Criminal Application.

5. Heard learned Counsel Mr. P.K. Jani for the petitioner , learned A.P.P. Mr. U.R.Bhatt for the respondent no.1 and Mr. Y.S.Lakhani for the respondent no.2.

6. Learned Counsel Mr. Jani for the petitioner submitted that since the report under Section 169 of the Code of Criminal Procedure ,1973 has already been submitted before the learned Metropolitan Magistrate on 17-2-2007 and the DCP of Ahmedabad has also submitted his report, he does not press the prayer made

vide Paragraph 18(B) for quashing the complaint in question and any further proceedings pursuant thereto. The learned Counsel, however, submitted that the condition no.4 imposed by the learned Additional Sessions Judge vide order dated 23-2-2007 passed om Criminal Misc. Application be quashed and set aside, or suspended and to order return of the passport of the petitioner so as to enable him to leave India as he is not a citizen of India. The learned Counsel further submitted that the alleged offence has taken place in the year 1999 and the complaint was lodged on 11-2-2007 when the petitioner came on a short visit to India. According to the learned Counsel as the report of the Investiating Officer made under Section 169 of the Cr,P.C. reveals that no offence is made out against the petitioner, the petitioner may permitted to leave India by impsoing suitable conditions so that he can meet his wife and two daughters who are worried about him since his arrival to India.

7. As against that, learned Counsel Mr. Lakhani for the original complainant has submitted that when the main prayer for quashing of the complaint is not pressed, the prayer for return of the passport and permission to leave India cannot be granted. The learned Counsel also submitted that the petitioner has suppressed material facts before the learned Magistrate as also the learned Additional Sessions Judge with a view to leave India. According to the learned Counsel, if the petitioner is permitted to leave India, he will not available during the trial, and hence, the application

deserves to be dismissed.

8. This Court has gone through the submissions made at the Bar by both the sides and the orders passed by the two Courts below. It is not in dispute that the petitioner is a citizen of U.S.A, that he came for a short visit to India, that the petitioner was arrested and was released on bail by the learned Additional Sessions Judge by imposing certain conditions including the condition that the petitioner shall not leave the territory of India without prior permission of the Courtand deposit his passport before I.O. within three days, if he is having. It is important to note that this order granting bail has been passed before the report under Section 169 of the Criminal Procedure Code was submitted by the Investigating Officer concerned and the DCP, Ahmedabad, and as per the report of the Investigating Officer and the DCP, Ahmedabad after thorough investigation, no offence is said to have been made out against the petitioner. In that view of the matter, it will be in the interest of justice, if the petitioner is directed to approach the learned Additional Sessions Judge, City Sessions Court, Ahmedabad with an appropriate prayer for permission to leave India and for return of the passport on suitable conditions, and the learned Sessions Judge shall decide such application as and when made by the petitioner on merits and in accordance with law. However, the learned Metroplitan Magistrate, Ahmedabad shall dispose of F.I.R bearing C.R.No.I 97 of 2007 registere d with Navrangpura Police

Station Ahmedabad City without being influenced by any of the observations made in this order , as they are confined only for the purpose of disposal of this application. Order accordingly.

9. The application stands disposed of with the aforesaid directions. Rule is discharged.

(M.D.Shah,J.)

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